

Appl. No. 10/635,249
Atty. Docket No. 8556C
Amdt. dated September 26, 2005
Reply to Office Action of June 24, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 20 are pending in the present application and stand rejected. Claims 1-20 have been rejected under the doctrine of obviousness type double patenting. Claims 1, 2, and 4-8 have been rejected under 35 U.S.C. § 102.

Double Patenting Rejections

Claims 1-20 have been rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-31 of U.S. Patent 6,642,427. These rejections are expressly not agreed with or acquiesced to. Nevertheless, in an effort to focus the remaining issues in prosecution and to obtain a more timely allowance of the pending claims, a terminal disclaimer is being filed with this response. This terminal disclaimer is sufficient to overcome all of the double patenting rejections.

Rejections Under 35 USC §102 Over Brunner et al. (US 5,681,298)

Claims 1, 2, and 4-8 have been rejected under 35 U.S.C. § 102(b) over Brunner et al. (US 5,681,298). As will shown more particularly below, the Office Action has not demonstrated that Brunner et al. teaches each and every element of either Claim 1 or of Claim 7 as is required for an anticipation rejection.

The Office Action asserts on Page 3, that the Brunner et al. patent teaches a temperature change element including a permeable layer and an impermeable layer. These layers are cited as lower layer 72 and upper layer 72 from the Figures (such as Figs. 2,3 and 7, for example). The Office Action further asserts that Brunner et al. teaches that the impermeable layer presents urine from passing completely through the temperature change element in the z direction and supports movement of urine in an x-y plane to wet the temperature change substance. Column 8, lines 0-17 and Figs. 1, 7, and 8 are cited as support for these asserted teachings.

A closer reading of the reference, however, reveals that the cited portions of Brunner et al. do not in fact teach all of these elements of Claim 1. The figures alone teach nothing about the permeable or impermeable nature of the layers 72. Therefore, such disclosure must come from the written description. Column 6, lines 57-63 of the patent notes that the temperature change substance 70 is desirably although not necessary

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in the form of particles sandwiched between the first and second containment layers 72. The first containment layer 72 may, for example, comprise a porous film or fibrous layer. Column 7, line 6 goes on to note that the second containment layer may, for example, comprise a liquid-permeable web material. Column 8, lines 10-17 of the patent, which the Office Action cites, discloses:

The temperature change member 22 may be constructed so that urine enters the container 74 directly through the containment layers 72, is transported into the container by the transport member 76, or both. Where urine is transported into the container 74, for example, the containment layers may comprise a liquid impermeable material

Taken as a whole, this disclosure merely teaches that that the containment layers may be either permeable or impermeable. Nothing in the cited disclosure, teaches that the upper layer may be permeable and the lower layer may be impermeable as is asserted in the Office Action. Additionally, the cited disclosure does not teach that the combination of layers supports the movement of urine in an x-y plane to wet the temperature change substance. Without these claimed teachings, the Brunner et al. patent cannot anticipate Claim 1.

Brunner et al. discloses two basic embodiments, those in which **both** containment layers 72 are permeable, and those in which **both** containment layers 72 are impermeable and the temperature change element is further provided with a transport member 76. The Office Action cites to no disclosure of the claimed combination of a permeable and impermeable layer arranged so as to support x-y movement of urine and wetting of more of the temperature change substance. By proper selection and arrangement of each layer in accordance with the instant specification, the claimed distribution and wetting is enhanced without the need to rely on a separate transport member as is utilized in Brunner et al.

Because of these differences between the Brunner et al. disclosure and the elements of Claim 1, the Brunner et al. patent does not anticipate Claim 1. Therefore, this rejection should be withdrawn.

Claim 7 contains many of the same features as Claim 1. In particular Claim 7 includes the limitations of a temperature change element including a permeable layer, and impermeable layer disposed opposite the permeable layer and a temperature change substance interposed therebetween, wherein urine deposited onto the temperature change element can penetrate through the permeable layer in a z direction to the impermeable layer and wherein the impermeable layer prevents urine from completely passing through the temperature change element in the z direction and supports the movement of urine in

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an x-y plane to wet the temperature change substance. The same disclosure discussed above with respect to Claim 1 is cited in the Office Action with respect to Claim 7. Therefore, the same analysis given above applies to Claim 7 demonstrating why Brunner et al. fails to teach each and every element of this claim. The rejection of Claim 7 should likewise also be withdrawn for at least the reasons given with respect to Claim 1.

Claims 2, 4-6, and 8 all depend from Claim 1 or Claim 7 and have at least all of the features already noted. The Office Action provided no further analysis showing how Brunner et al. teaches each of these features. Therefore, these remaining claims are patentable over the Brunner et al. patent for at least all of the reasons given previously with respect to Claims 1 and 7.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. All outstanding matters in the Office Action have been addressed. No new matter has been introduced. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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